



COPY

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April 10, 2008

William K. Vancanagan, Esq.
DATSOPOULOS, MACDONALD & LIND, PC
201 W. Main St., Suite 201
Missoula, MT 59802-4334

Re: Clarification of discussions regarding Eight Mile Creek Road pertaining to pending subdivision applications for Morado Mountain Estates and Sandhill Ridge

Dear Bill:

As you know, the Planning Department is completing its review of the above subdivision applications and preparing to forward its reports to the Planning Board for consideration next week. Given the huge number of discussions and correspondence between us over the past six months or so regarding Eight Mile Creek Road as it pertains to the variance requests of these subdivisions, the Planning Department has requested a written summary from my office to include with its report. This summary, which lays out our communications on this issue, is intended to ensure that the Planning Board and Board of County Commissioners are fully informed of what has taken place.

In summary, terms (1) through (7) of your February 29, 2008, letter (a copy of which will be attached to this letter and submitted to the Planning Department), accurately set forth conditions for improvement of Eight Mile Creek Road that have been discussed between the applicants and the Road Department as a proposed variance from the Ravalli County Subdivision Regulations. Road Department Supervisor Dave Ohnstad will be recommending to the Planning Department that the variance to the road standards for Eight Mile Creek Road be granted for both subdivisions, according to the conditions specified in your February 29th letter. Based upon his recommendation, the Planning Department will, in turn, recommend approval of the variance requests according to the proposed conditions. None of these recommendations obligate either applicant to make improvements to Eight Mile Creek Road unless both subdivision applications are granted preliminary plat approval by the Board of County Commissioners. If such approval is granted, the timeline for tendering road improvement payments will be one half payment within 30 days of such approval and the remaining one half within 45 days thereafter (75 days total after approval).

I think it is helpful to clarify several statements in your February 29th letter for the reviewing parties' benefits as the subdivision review process proceeds. I realize that we have talked about this before, but I

think it would be best to have them clearly stated here in this summary document. As I have mentioned before, Karen Mahar is the new attorney in charge of this matter. I would hate for any confusion to arise due to my absence. Summing up all of our discussions will be in everyone's best interest.

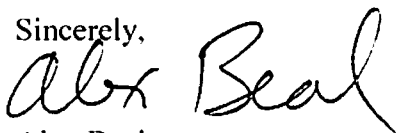
First, your statement that "the County has agreed to permit" the applicants to vary from County road standards is accurate only so much as certain County departments have agreed to make recommendations to the Planning Board and Board of County Commissioners. The Road Supervisor, Planning Department, and/or Planning Board cannot bind the Commissioners, who by law make the final decision on variance requests, subdivision applications, and any specific conditions for approval. In other words, the extent of the "agreement" ends with the departments' recommendations to the Commissioners.

Second, your letter mentions a "recommendation from the County Attorney's Office." This may just be semantics, but it is not the County Attorney's role to make recommendations for approval of specific variances. Based on discussions with the Road Department regarding application of the road standards to Eight Mile Creek Road, the County Attorney's office will advise the Commissioners that the approval of the variances according to the conditions proposed by Mr. Ohnstad and the Planning Department are legal and within the discretion of the Commissioners. If the Commissioners have any questions regarding potential benefits and drawbacks of this variance, the County Attorney's Office, as their legal counsel, will answer them.

Third, the specific recommendations by County departments set forth above regarding Eight Mile Creek Road do not in any way, shape, or form constitute a recommendation regarding ultimate approval of these subdivision applications. As you know, we have never discussed the subdivision applications themselves; our conversations were always limited to the Eight Mile Creek Road variance. The Commissioners make the final decision on all subdivision applications and variance requests, and while they may give significant weight to the recommendations and findings made by staff, the final decision is theirs alone. As such, should the Commissioners deny the variance requests, deny the subdivision applications, or conditionally approve either one in a way contrary to the above recommendations; nothing in any of our discussions prohibits the Commissioners or any County department or office from taking all legally allowable actions to enforce and defend the ultimate decision made. In other words, this is only a recommendation. Whatever decision the Commissioners make, the County Attorney's Office (and the County in general) will enforce it fully.

I believe that we have discussed and agree on the content of this letter. If there is anything at all in this letter you disagree with, please contact this office immediately. That and any other matters should be directed to Mrs. Mahar.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Beal". The signature is fluid and cursive, with the first name "Alex" and last name "Beal" clearly distinguishable.

Alex Beal

Deputy Ravalli County Attorney

Cc: Planning Department (with attachment)
Dave Ohnstad, Road & Bridge Department
File

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February 29, 2008

VIA FACSIMILE [375-6731]

Mr. Alex Beal, Esq.
Ravalli County Deputy Attorney
Ravalli County Courthouse
205 Bedford, Suite C
Hamilton, Montana 59840-2853

RE: Eight Mile Creek Road Improvements
Our Clients: Morado Estates and Sandhill Ridge
Our File Nos.: 19793.001 and 19710.001

Dear Alex:

The purpose of this correspondence is to memorialize the agreement regarding improvements to Eight Mile Creek Road among Paul Wilson, with Sandhill Ridge; Stacey Dykeman with Morado Mountain Estates; and the Ravalli Planning Department and County Road and Bridge Department.

Pursuant to negotiations which began in September 2007, the County has agreed to permit Mr. Wilson and Ms. Dykeman, both individual subdivision applicants, to make certain improvements to Eight Mile Creek Road rather than adhere to the strict letter of Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which states, in pertinent part:

"all subdivisions of 21 or more units shall acquire all property easements, and all roads (county or private) within and leading to the subdivision along the primary route of access shall be brought to county standards for new construction from the nearest county standard road which meets the County standards for new construction over its length that lies on the primary access route to the subdivision."

Specifically, in exchange for the recommendation from the County Attorney's office, the Planning Department, and the Road and Bridge Department to approve the applicants' requests for variances from RCSR 5-4-5(b)(4), the parties have mutually agreed that the applicants will improve Eight Mile Creek Road according to the following terms:

Mr. Alex Beal, Esq.

February 28, 2008

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- (1) Applicants will improve Eight Mile Creek Road to County standards for existing roads, rather than "new construction;"
- (2) Eight Mile Creek Road will not require a 60 foot right of way. The current 50 foot right of way has been mutually agreed to be acceptable;
- (3) Improvements to the N/S Major Collector segment will be at a road width of 24 feet for a distance of 3150 feet, and improvements to the E/W Minor Collector Segment will be at a road width of 22 feet for a distance of 17,375 feet;
- (4) Applicants will pay for a 0.12' leveling course and an 0.17' wearing course. The mutually agreed upon calculations for the leveling course and wearing course over the areas noted in item (3) are:
 - a. 1520 cubic yards crushed aggregate for the shoulders @ \$11.00 per cubic yard equaling 16,720.
 - b. 4680 tons plant-mix asphalt @ \$45.00 per ton equaling \$210,600.
 - c. 7625 tons plant-mix asphalt @ \$45.00 per ton equaling \$343,125;
- (5) Additional improvements will require that applicants pay for 1 (10x3x48) Concrete Box Culvert @ \$420 per foot + \$2700 in delivery costs for a total of \$22,860;
- (6) The total cost under (4) and (5) is \$593,305, but the parties acknowledge this total is subject to change depending on the unit cost of plant-mix asphalt; and,
- (7) Pursuant your letter dated January 28, 2008, the applicants' expenditures for Eight Mile Creek Road improvements will be offset by any pro rata payments made in the same grader district from the time either subdivision is preliminary approved until the time of Eight Mile Creek reconstruction.

Due to the complexity and uncertainty of the Ravalli County subdivision process, certain key variables must be locked down before the applicants can agree to any road improvements.

As you know, Stacey and Paul have always approached the Eight Mile Creek project as joint endeavor. Their decision to do so has been a matter of economic necessity driven by the County's enforcement approach to the applicable regulations. This enforcement approach as you know has been the subject of significant legal analysis and discussion by and between our respective offices and the understanding which we have been able to reach has been orchestrated in part by our mutual efforts to resolve some very serious issues without the involvement of federal or state courts.

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As you are aware from our many discussions regarding this matter, the process which you and I have outlined and agreed upon raises timing issues with respect to Planning Board hearings and the hearing before the Commissioners. As we have discussed many times throughout the negotiation of this matter, since neither applicant is financially capable of completing almost \$600,000 in road improvements independently, the Sandhill Ridge and Morado Mountain Estates applications must, for practical and logistical reasons, be coordinated. Their respective Planning Board and Commissioners hearings must be scheduled contemporaneously, preferably on the same day and session and I look forward to working with your office to accomplish that objective as we have discussed.

Furthermore, as you and I have discussed in past telephone conversations, neither applicant will be under any obligation to make improvements to Eight Mile Creek Road unless both applications are granted preliminary plat approval.

I would also respectfully suggest that the County provide a written timeline for tendering road improvement payments. Given the significant money involved, a formal and memorialized schedule is in the best interests of all parties and should serve to minimize controversy at a later date.

I also want to make it clear that although we have been able to short circuit full blown litigation with the arrangement described herein, my clients strongly believe that the costs which they are obligated to incur under this arrangement significantly exceed the constitutional requirements of nexus and proportionality and therefore any amounts paid for road improvements under this arrangement are paid under protest.

I look forward to continuing to work with your office in a spirit of continued cooperation to implement the arrangements above described.

Given the length of time and the substantial effort expected by all of the parties in reaching this understanding, I trust that the County will continue to work with my clients in processing their application in a fair and expeditious manner.

Sincerely yours,

DATSOPOULOS, MacDONALD & LIND, P.C.

William K. VanCanagan, Esq.

WKV/ksh

DATSOPOULOS, MacDONALD & LIND, P.C.

Mr. Alex Beal, Esq.

February 28, 2008

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Cc: Morado Estates

Attn: Ms. Stacey Dykeman (Via Email)

Sandhill Ridge

Attn: Mr. Paul Wilson (Via Email)

DJ & A

Attn: Mr. Terry Forest (Via Email)

WGM Group

Attn: Ms. Julie Titchbourne (Via Email)

Ravalli County Road Department

Attn: Mr. David Onstad (Via Email)

Ravalli County Planning Staff

Attn: Ms. Renee Lemon (Via Email)

Datsopoulos, MacDonald, and Lind, P.C.

Attn: Ms. Joslin Monahan, Esq. (Via Email)

\\Dykeman, Stacey 19793\Morado Mountain Estates Subdivision 001\Correspondence\Beal ltr 022808.doc